



City of Carmel

Carmel Board of Zoning Appeals Regular Meeting Monday, January 22, 2007

The regularly scheduled meeting of the Carmel Board of Zoning Appeals met at 6:00 PM on Monday, January 22, 2007, in the Caucus Rooms of City Hall, Carmel, Indiana. The meeting was called to order by President James Hawkins.

No Oaths of Office were given. Mrs. Torres may need to take an oath at the next meeting.

Members in attendance were Kent Broach, Leo Dierckman, James Hawkins, Earlene Plavchak and Madeleine Torres, thereby establishing a quorum. Angie Conn and Mike Hollibaugh represented the Department of Community Services. John Molitor, Legal Counsel, was also present.

Mr. Dierckman moved to approve the minutes of the December 18, 2006 meeting as submitted. The motion was seconded by Mrs. Torres and **APPROVED 5-0.**

G. Election of Officers:

Mr. Dierckman nominated James Hawkins for President, seconded by Mrs. Torres.
James Hawkins was elected President by unanimous consent.

Mr. Dierckman moved the elections be by acclamation. The motion was seconded by Mrs. Torres and **APPROVED 5-0.**

Mrs. Torres nominated Mr. Dierckman for Vice President, seconded by Mrs. Plavchak. Since he had been Vice President in the past, he recommended Mr. Broach.

Mr. Hawkins moved to elect Mr. Broach for Vice President, by acclamation, seconded by Mr. Dierckman. **Mr. Broach was elected Vice President** by acclamation.

I. Reports, Announcements, Legal Counsel Report and Department Concern.

- 1i.** Lubavitch of Indiana attorney stated new public notice will be made for Feb. 22 meeting
- 2i.** Bill Estes item – Dept. requests the Board vote to require new public notice be made for

Mrs. Conn pointed out these two items have each been tabled three times. The Department recommended that the Board require them to re-do their Public Notice for the next meeting.

Mr. Dierckman moved to remove them from the Agenda. The motion was seconded by Mr. Hawkins. Mrs. Torres asked if they were being removed from the agenda or just required to re-do the Public Notice. Mr. Dierckman stated it would be both. The motion was **APPROVED 5-0.**

Mr. Molitor pointed out that the Board had responded to the Discovery Request for the pending litigation. They will probably need to have an Executive Session in the next month or two to discuss follow-up related to those Discovery Responses. The Board members decided to have an Executive Session after the next regular meeting on February 26.

J. Public Hearing

1-2j. TABLED UNTIL FEB. 26: Bill Estes Pre-Owned Facility

The applicant seeks the following development standards variance approvals:

~~Docket No. 06090020 V Chapter 26.04 north buffer yard reduction~~

~~Docket No. 06090023 V Chapter 23C.10.3.5(e) screened parking within front/side yard~~

~~The site is located at 4102 W. 96th St and is zoned B2/Business and I1/Industrial within the US 421 Overlay. Filed by Mary Solada of Bingham McHale.~~

3j. TABLED UNTIL FEB. 26: Lubavitch of Indiana Worship Center

~~The applicant seeks approval for the following special use approval:~~

~~Docket No. 06050007 SU Chapter 5.02 Special Uses~~

~~The site is located at 2640 W 96th Street and is zoned S-1/Residence.~~

~~Filed by Dave Coots of Coots, Henke & Wheeler, P.C.~~

4j. WITHDRAWN: CMC Properties, Sec 2, Lot 3 - Holiday Inn

~~The applicant seeks the following use variance approval for a full service hotel use:~~

~~Docket No. 06100016 UV Section 16.01 permitted uses~~

~~The site is located at the northwest corner of 131st St. and Meridian St. and is zoned B-5/Business within the US 31 Overlay.~~

~~Filed by DeBoy Land Development Services, Inc for Motels of Carmel, LLP.~~

5j. TABLED UNTIL FEB. 26: Forest Glen, Lot 3 - Printing Plus

~~The applicant seeks the following use variance approval for an office use:~~

~~Docket No. 06090012 UV ZO Chapter 6.01 Permitted Uses~~

~~The site is located at 2110 E. 96th St. and is zoned S-2/Residence.~~

~~Filed by Col. Rex A. Neal of Printing Plus.~~

6j. TABLED UNTIL FEB. 26: Monon & Main, Unit 2D

~~The applicant seeks the following development standards variance approvals:~~

~~Docket No. 06110001 V Section 15.26 of PUD Z-462-04 non-residential uses on 2nd & 3rd floors~~

~~The site is located northeast of Third Ave NW and Main St., and is zoned PUD/Planned Unit Development. Filed by Carole Moore of Sell4Free Real Estate for Elahe Farahmand.~~

7j. Monon & Main, Unit 2B

The applicant seeks the following development standards variance approval:

Docket No. 06120011 V Section 15.26 of PUD Z-462-04 non-residential uses on 2nd & 3rd floors
Docket No. 06120015 V Section 2.13.B of PUD Z-462-04 2-car garage requirement

The site is located northeast of Third Ave NW and Main St., and is zoned PUD/Planned Unit Development. Filed by Mr. and Mrs. Ardalan for Soori Gallery.

Present for the Petitioner: Mr. and Mrs. Ardalan. Mrs. Ardalan stated that they both retired from the medical field before they opened an art gallery in Zionsville in 2005. In October she was recruited by Evan Lurie to open an art gallery in the Carmel Arts District. They had also met with Mayor Brainard.

They toured the Art District and found there was no place for their gallery. They decided to buy a location for their gallery instead of renting, because the cost of the rent gradually goes up and the art gallery can not survive. She shared a drawing of the facility. The first floor for the commercial area is only 15 by 14 feet. On the side is a restroom approximately 4 by 10 feet, leaving only 170 square feet for the art gallery. Pictures of the Zionsville gallery were shown to depict the type of art she would be showing. She has a collection from various areas, so the people in Indiana do not have to travel to obtain the national and international art pieces.

Mr. Ardalan stated it was very upscale, high quality and unique art pieces.

Mrs. Ardalan stated that from her experience in Zionsville, the traffic is very light. She planned to open the whole area of the first floor for the art gallery with lots of windows. She found there were five different projects going on in the district for parking spaces; the underground parking at the Indiana Design Center, street parking, new parking area just south of Main Street, and another parking lot being designed with 250 parking spaces. She felt there would be plenty of parking spaces. She and her husband would be the only ones in the gallery and they travel in one car. At the steps to the upstairs she would place a rope/cord so the second and third floors would be a showroom not open to everyone. Highlights of everything she has will be on the first floor. The second and third floors would be designed like a home, showing the art in a home setting. She will use the third bedroom/den area for her office.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

The Public Hearing was closed.

Mrs. Conn gave the Department Report. She had distributed the letter from Les Olds reiterating the fact that there would be a 200 space parking garage. The variances are being sought because the PUD Ordinance only allows business uses on the first floor. The Department recommended positive consideration after all questions and comments are addressed.

Mrs. Torres asked about the square footage after the first floor is opened up, any changes to the front of the structure and the hours of operation.

Mrs. Ardalan stated she would gain approximately 600 square feet. She has approximately 1600 square feet in Zionsville which is very crowded. There will be no changes to the front. She will be using the window to display various items on pedestals. Her hours of operation would be 11 am to 5 pm and by appointment for any other times. She would be open later if there were activities or special events in the Art District.

Mr. Hawkins asked about the garage entrance and the garage's finish.

Mr. Ardalan pointed it out on the site plan.

Mrs. Ardalan had learned if they use porcelain tile on concrete, it could still be used to park cars in the garage. The garage door would remain.

Mr. Ardalan stated that the kitchen and bath would be used to show how the art could be displayed in a home.

Mr. Hawkins asked if they could make this a specific approval for just an art gallery.

Mr. Molitor stated the Board could limit it to that use.

Mrs. Ardalan stated she would only be using it for things related to art.

Mr. Dierckman moved to approve **Docket Nos. 06120011V and 06120015 V, Monon & Main, Unit 2B**, for an art gallery. The motion was seconded by Mrs. Plavchak and **APPROVED 5-0**.

7-9j. West Carmel Shoppes - Signage

The applicant seeks the following development standards variance approval:

Docket No. 06120007 V	Section 25.07 Sign Chart B	sign height
Docket No. 06120008 V	Section 25.07.01.04	off-premise sign
Docket No. 06120009 V	Sections 25.07.01.08, 25.07.02.09	number of signs

The site is located at southeast corner of 106th St and US 421 is zoned B-3/Business and within the US 421 Overlay. Filed by Paul Reis of Bose McKinney & Evans, LLP.

Present for the Petitioner: Paul Reis, with Bose McKinney & Evans and Mary Ringis, with Veritas Realty, the property manager for the West Carmel Shoppes. Mr. Reis used the packet that had been submitted to the Board to point out the features of the area. When this was developed and the shops were put in place, there was not a reservation for a ground sign for the integrated center. Then the outlots were sold and constructed. This has posed a significant difficulty on the shops because they have lost their visibility along US 421. He had been contacted by the owner of the shops to review the situation. He discussed with the Department staff the possibility of an off-premise sign. In the course of his discussion with Matt Griffin, they agreed there was some merit to seek a variance for an off-premise sign. In doing that, they needed to contact each of the outlot owners and leasers to see if they wanted to participate on the sign. Ms. Ringis went to Ritter's, Wendy's and Walgreen's. Ritter's approved of the sign, but declined to be on the sign. Wendy's has a ground sign. They approved of the sign, but declined to be on the sign. Walgreen's approved the sign on their outlot, but they wanted to be the top tenant on the sign. He pointed out the proposed location of the sign. They wanted to have the best location for visibility and similar to the other ground signs along Michigan Road (US 421). They needed a high-quality sign. They contacted A Sign by Design and asked them to look at the sign at West Carmel Marketplace. The proposed design is very similar to West Carmel Marketplace. They used West Carmel Shoppes at the top to develop a sense of place or destination. The 10-foot height of the sign was selected for readability of the panels and to include the architectural detailing of West Carmel Shoppes. They felt it was consist with the scale of the 4-lane highway intersection and was not overbearing. They studied where they could put a sign on 106th Street or the intersection with Commerce Drive. Because of the right-of-way and landscape requirements, it was not feasible. They need visibility along Michigan Road for the success of the center. Therefore, the logical place for the sign was the intersection at 106th Street and Michigan Road/US 421. With the height of the sign, the people traveling north would be able to turn before the sign to enter the shops. The primary purpose of this ground sign is to give critical identification to the West Carmel Shoppes. However, they would be adding another sign for Walgreen's. The Walgreen's has three signs. They are permitted two signs and

have a variance for the third sign. This is the only Walgreen's in this area that does not have a ground sign. This would give them a ground sign as part of the integrated center sign. They do not feel they are cluttering the Walgreen's site and the sign fits in with the overall integrated center.

Ms. Ringis stated the center is about eight years old. The original owner sold the center in December 2005. The new owners like to keep their property at a high level and keep their tenants. Some of the tenants voiced their opinion about their visibility with the maturity of the trees and the outlots in front of the center. There is an office building in the area, so people traveling down the street are not sure if the center is retail or office space. They have small businesses competing with major chain stores. She felt the height of the sign gave visibility. The sign is crucial to the success of the tenants and to keep the occupancy up.

Mr. Reis felt they satisfied the statutory requirements for the variances for the sign height, location of the sign and number of signs.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

The Public Hearing was closed.

Mrs. Conn gave the Department Report. It had recently become the Department's policy to recommend negative consideration of all variances such as this regarding signage. As stated in the Department Report, Walgreen's already has multiple signs, permitted by multiple variances. West Carmel Shoppes has been in existence eight years and only now requesting multi-tenant signs. West Carmel Marketplace does have 5 signs. Even though they are close to 14 feet in height, they are set back 15 to 35 feet from the road right-of-way. The retail center just north of this site is proposing two ground signs that will be 5 feet tall and 10 feet away from the road right-of-way.

Mr. Molitor stated there seemed to be some discrepancy in the way the packets were put together and they did not each contain findings of fact sheets for the three different variances.

Mr. Reis distributed the correct sheets.

Mr. Dierckman asked if Walgreen's needed to be on the sign because of the sign's location.

Mr. Reis stated the actual location of the sign will be on the Walgreen's outlot. It was felt that if it was going to be treated as an integrated center, then everyone should have an opportunity to participate. Since Walgreen's does not have a ground sign, they approved the sign if they were on the top of the sign. The Petitioner only owns the property behind the three outlots. Walgreen's only has one additional sign than is permitted.

Mr. Dierckman asked about a sign along 106th Street on the owner's side of the curb-cut.

Mr. Reis said it was not possible with the current right-of-way and landscaping. They had the same problem along US 421. This is the only appropriate place for the sign. They could fit it in at the first driveway, but felt it was not the most appropriate place for visibility.

Discussion continued about the ground signs at Wendy's and Ritter's with their drive-thrus and other locations for a shorter sign.

The sign would be white with black letters. If Walgreen's wanted red, they would need an ADLS. The bricks of the sign are consistent with the Walgreen's and style is along the lines of the other signs in the corridor.

Ms. Ringis stated they wanted a more upscale sign rather than the typical monument sign with aluminum.

Mr. Reis stated that the Wendy's ground sign was so low; it would have to be replaced to add any tenants. The right-of-way is more open at Walgreen's.

Mrs. Torres did not feel they would want to direct their traffic to the back building through the Wendy's drive-thru exit.

Mr. Reis stated they wanted the sign to be visible to the south-bound traffic so that they could make the left turn at 106th Street.

Mrs. Torres asked if the sign sat above grade.

Mr. Reis stated the base element was about a foot so that the sign was off the ground. The parcel is a little below the elevation of the intersection.

Mr. Dierckman felt the Walgreen's did not need another sign. Maybe a different location would be better.

Mrs. Torres noted there were more tenants in the center than listed on the sign.

Mrs. Ringis stated they made the panels so that people driving down the road would be able to read them. Since they only had so much room, the tenants with the largest square footage or the longest occupancy were listed on the sign.

Mrs. Torres stated that the newer tenants would not be visible.

Mr. Hawkins asked how long the tenants had been in the center.

Ms. Ringis stated Neva Ridge has been about a year; Prudential was no longer there so it would open a space; 106th Street Grill has been there several years; Roselli's has been about a year and a half (Their established business on 96th Street moved with them.); the Pet Clinic has been there for some time and may have been an original tenant; Pet Jungle and Clubhouse Cuts have been there for some time. They have a mix of new versus old and big versus small.

Mrs. Torres could see the argument for a sign, but did not agree with the 10-foot height.

Mr. Reis stated that the sign could only be on Walgreen's parcel if their name was on the sign. If Ritter's had said they wanted it, then it could be on their land. Walgreen's is used to having a ground sign with changeable copy, the drive-thru sign and the wall signs.

Mr. Hawkins asked if there would be a lease on the land or would Walgreen's just get their name on the sign. Have they been approached about just leasing a portion of the land to get a sign up without their name?

Ms. Ringis stated that was not an option.

Mr. Hawkins did not like the height of the sign and did not feel Walgreen's needed additional signage. He was sympathetic, but it was just too much.

Mr. Reis stated they could lower the sign and take off the architectural detailing on the top which is almost 2 feet. Or they could eliminate panels, but that goes back to the argument that the biggest and oldest tenants would have signage, but the new tenants would not.

Ms. Ringis stated that Walgreen's wanted the top panel and they wanted to be on the sign or it was no deal. They were pushing red, but she said she was going for black for consistency.

Mr. Dierckman would rather do it off their land and exclude them. It is hard to find the place and it is dangerous because of slowing down to find the tenant.

Mrs. Plavchak pointed out a location on 106th Street.

Mr. Reis stated that 106th Street was impossible because of the right-of-way, drainage and landscaping. A pole sign would work, but not an appropriate sign.

Discussion continued about the size and location of the sign. Different options were discussed.

Mr. Reis stated they could not make any other commitments at this meeting. They would need to negotiate with the other outlot owners. They would need to go to Plan Commission after the variances are approved. He had given the Public Notice based on the Walgreen's parcel. They are below grade of the road and would need a foundation, but could probably do eight feet.

Mrs. Plavchak felt from a safety standpoint that Ritter's parcel was a better location for passing traffic.

Mr. Reis would like the Board to entertain approval of a variance for an 8-foot sign off-premises at the southwest corner of the Ritter's outlot parcel with Public Notice. Then he would table the number of signs. If they could reach a contractual agreement with Ritter's then they would withdraw the number of signs. That would allow them to re-design the sign to 8 feet and go to the Plan Commission Committee to get the re-design and go from there.

Mr. Dierckman asked if they could stipulate the colors of the sign.

Mr. Molitor stated they could set reasonable conditions on their approval. He was concerned that notice be given before the approval. They could ask the Board to approve the amendment subject to

notice being given before it is heard again. The Petitioner must offer the amendment and the Board could vote on the amendment and continue the item until notice is given.

Mr. Reis amended Docket Nos. 06120007 V from 10 feet to 8 feet for sign height and 06120008 V off-premise sign from Walgreen's to Ritter's southwest corner with white panel and black letters. Docket No. 06120009 V was tabled pending determination.

Mr. Reis stated the Plan Commission Committee would review the lighting and landscaping in the ADLS docket.

Mr. Dierckman moved to accept the **Amendments** as outlined by the Petitioner. The motion was seconded by Mr. Hawkins and **APPROVED 5-0** by a show of hands.

10-12j. Home Place, Lot 48

The applicant seeks the following development standards variance approvals:

Docket No. 06120012 V Section 9.04.03.A front yard setback along west property line

Docket No. 06120013 V Section 9.04.03.D rear yard setback from east property line

Docket No. 06120014 V Section 9.04.03.B & D setback from north property line

The site is located at 10505 N. Cornell Ave., and is zoned R-3/Residence within the Home Place Overlay. Filed by Timothy Wood.

Present for the Petitioner: Tim Wood, owner of the property, but not the resident. He resides in Michigan. In order to facilitate maximum use of the zoning to sell the property, he would like to modify the setback requirements on the south corner lot at Cornell and 105th Street. He indicated in the packet that he would like to orient the front yard on 105th Street and Cornell as the side yard. Therefore, he would need to reduce the required setbacks. The rear setback would be reduced from 20 feet to 5 feet. The side yard on Cornell would be 10 feet. The front setback would be reduced from 20 feet to 10 feet.

Remonstrance:

Erin McGhee, 10528 McPherson, wanted to know if this would change the property lines. The parcel backs up to her backyard.

Mr. Hawkins stated they were changing how far the home can be built on it. Since she is on the east, the home could be built up to five feet from the property line.

Mr. Wood explained the position of the building on the parcel. There would be no changes in the zoning.

The Public Hearing was closed.

Mrs. Conn gave the Department Report. Overall the Department was in favor of the reduction of the setbacks. It would allow for a structure to be built on the parcel, which otherwise could not have been done with two front yards of 30 feet each. She wanted the Petitioner to touch upon the drainage easement approval. The Department recommended positive consideration.

Mr. Wood stated there is a drainage easement of 75 feet from the center line on Cornell. The whole lot is 130 feet deep. Essentially half the lot is in a drainage easement which would prevent building on the lot. The Drainage Commission approved reducing the easement from 75 feet to 30 feet. The setback requirements would be fine within their easements.

Discussion followed concerning the setbacks requested and the drainage easement.

Mr. Wood stated that even if the 10-foot setback was approved, the 15-foot easement would prevent them from building closer than 15 feet to the property line. He had asked for the 10-foot setback before he received the 15-foot easement. That's why it does not correspond with what was approved by the Drainage Board. He knew he could not build in the drainage easement, even if the 10-foot setback was approved. The lot has the ability to hook up to City water and sewer.

Mr. Molitor stated it was not the Board's issue about building in the easement. They could not override the County Drainage Board. The Department should watch the building permit for location of the building.

Mr. Hawkins moved to approve **Docket Nos. 06120012 V, 06120013 V, and 06120014 V, Home Place, Lot 48.** The motion was seconded by Mrs. Torres. **Docket No. 06120012 V**, front yard setback along west property line was **APPROVED 4-1**, with Mrs. Torres casting the negative vote. **Docket Nos. 06120013V**, rear yard setback from east property line and **06120014 V**, setback from north property line, were **APPROVED 5-0.**

K. Old Business

There was no Old Business.

L. New Business

There was no New Business.

M. Adjournment

Mr. Dierckman moved to adjourn. The motion was seconded by Mrs. Plavchak and **APPROVED 5-0.** The meeting adjourned at 7:40 PM.

James R. Hawkins, President

Connie Tingley, Secretary